IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.9567 OF 2003

Digambar Dattatraya Kulkarni. ...Petitioner.
Vs.
Smt.Shakuntalabai P.M. Pawar & Anr. ...Respondents.
....
Mr.T. D. Deshmukh h/f. Mr.A. A. Kumbhakoni for the Petitioner.
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CORAM : DR.D.Y.CHANDRACHUD, J.

June 6, 2006.

P.C.

The suit for eviction was in respect of the premises of a shop admeasuring 380 sq.ft. situated on the ground floor of City Survey No.1560 at Kolhapur. The ground for eviction was that the Petitioner had sublet the premises to the Second Respondent which is a Co-operative Credit Society. The Trial Court came to the conclusion that the ground of subletting has been established and the judgment has been affirmed in appeal by the Additional District Judge.

The case of the First Respondent, the original Plaintiff, was that in the year 1994, the Petitioner sublet the premises to the

Second Respondent on rent of Rs.1500/- to Rs.2000/- per month. The premises had been let out for the purposes of business, originally to deceased Dattatraya, the predecessor-in-interest of the Petitioner who was carrying on the business of furniture therein. According to the First Respondent, the business was closed and the premises came to be sublet to the Second Respondent in the year 1994. The Second Respondent being a Co-operative Credit Society, the Plaintiff adduced the evidence of Atul Vishwanath Pawar, P.W. 2, an employee in the office of the District Deputy Registrar, Co-operative Societies. The record of the District Deputy Registrar was produced and marked as Exh.56 and it has emerged therefrom that the Co-operative Society had registered itself with reference to the address of the suit premises. The application for registration was filed by the Chairman of the Co-operative Society. That apart, a Court Commissioner was appointed and in the course of his report, which was marked as Exh.12, it has been found that the Board of the Co-operative Credit Society was found on the suit premises when the premises came to be visited. In these circumstances, the Learned Trial Judge held that the Plaintiff had discharged the burden of establishing that there was a subletting of the premises and that thereupon it

was necessary for the Petitioner to explain how the premises were in the possession of the sub-tenant. No cogent evidence on the side of the Petitioner was forthcoming. Undoubtedly, in order to establish subletting, it was necessary to establish exclusive possession of the third party and the transfer of the premises to the third party for consideration. These requirements have been established in the evidence of the First Respondent and the oral evidence adduced on behalf of the First Respondent was duly corroborated by the documentary evidence produced by the office of the District Deputy Registrar, Co-operative Societies. In these circumstances, the exercise of the writ jurisdiction under Article 227 of the Constitution is clearly not warranted. There is neither an error apparent on the face of the record, nor is any case made out for the exercise of the supervisory jurisdiction within the parameters settled by law. The Petition is accordingly dismissed.

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